

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 544 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos.1 to 5 - No.

-----

FARUQ KASAMBHAI KABANJIWALA

Versus

YASMINBHANU GANIBHAI CHAUDHRI

-----

Appearance:

MR AY PATHAN for Petitioner

SERVED for Respondent No. 1

MR.ST MEHTA,ADDL. PUBLIC PROSECUTOR for Respondent No. 2

-----

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/97

ORAL JUDGEMENT

The respondent No.1 has preferred Cri.Misc.Application No.46/93 for maintenance for herself and her minor daughter under section 125 of the Criminal Procedure Code before the learned Metropolitan Magistrate, Ahmedabad. Pending the said application she filed an application for award of interim maintenance. Said application has been allowed by the learned Magistrate under his order dated 3rd December, 1993.

Learned Magistrate has directed the present petitioner to pay an interim monthly maintenance of Rs.150/- to the respondent No.1 - wife and Rs.100/- to the minor daughter.

Feeling aggrieved the petitioner has preferred this revision application under section 397 of the Criminal Procedure Code. It is contended that the petitioner has divorced the respondent No.1 and in view of the provisions contained in sections 3 & 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 the application for maintenance of a divorced wife under section 125 of the Criminal Procedure Code is not maintainable. The petitioner could not have been directed to pay interim maintenance to the respondent No.1 wife.

The respondent No.1 in her application has asserted that she is a deserted wife of the petitioner. Petitioner's plea that he has divorced the respondent No.1 is disputed. Hence unless the factum of divorce is established by the petitioner the provisions contained in the Muslim Women(Protection of Rights on Divorce) Act 1986, cannot be invoked. At this stage it cannot be said that the learned Magistrate has acted without jurisdiction. Further, the order impugned herein being an interlocutory order in view of the provisions contained in section 397(2) of the Criminal Procedure Code, the present revision application is not maintainable.

Petition is, therefore dismissed. Rule is discharged.

\*\*\*\*\*